

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

DARRELL MACON,	)	
	)	
Plaintiff,	)	
	)	No. _____
v.	)	
	)	
FAMILY DOLLAR STORES OF	)	
MO, LLC	)	
	)	<b>JURY TRIAL DEMANDED</b>
Defendant.	)	

**NOTICE OF REMOVAL**

In accordance with the provisions of 28 U.S.C. § 1441, *et seq.*, notice is given as follows:

1. Defendant Family Dollar Stores of Missouri, LLC removes this action from the Circuit Court of St. Louis County, Missouri, Case No. 16SL-CC01483, to this Court, pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq.*

2. Plaintiff Darrell Macon filed his Petition against Defendants on April 22, 2016 seeking damages for “an Intentional Tort” arising out of an incident in which he was assaulted by two unknown assailants at Defendant’s store located at 5251 Jennings Station Road, Jennings, MO on March 17, 2016. (A copy of all process, pleadings, orders and other documents served upon Defendant and on file in the state court is attached hereto as Exhibit A.) Defendant was served with Plaintiff’s Petition on May 2, 2016. As such, Defendant has complied with the time requirements set forth in 28 U.S.C. § 1446(b).

3. The Circuit Court of St. Louis County, the court in which this action is pending, is located within the jurisdiction of the United States District Court for the Eastern District of Missouri, Eastern Division.

4. Removal of this action is proper under 28 U.S.C. § 1441, *et seq.*, because this Court has original jurisdiction over this matter.

**Jurisdiction is Proper Pursuant to 28 U.S.C. § 1332(a).**

5. The Court has jurisdiction over this action, pursuant to 28 U.S.C. § 1332(a) because it is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

***Amount in Controversy Exceeds \$75,000***

6. In his Petition, Plaintiff seeks damages in an unspecified amount but states that as a result of the assault he “was caused to suffer serious bodily injury of a permanent nature, and has been compelled to expend a large sum of money for medical expenses.” See Exhibit A. Plaintiff further states he was knocked unconscious during the attack and sustained a broken rib, an unspecified head injury and contusions throughout his body. See Exhibit A.

7. Furthermore, Plaintiff appears to be seeking punitive damages from Defendants as a result of this incident in his Petition.<sup>1</sup>

8. A claim for punitive damages may be considered in determining the amount in controversy for purposes of removing a case based on diversity grounds. Visintine v. Saab Auto A.B., 891 F.Supp. 496, 497 (E.D. Mo. 1995).

9. As such, according to his pleadings, Plaintiff is seeking damages for (1) a serious/permanent bodily injury including fractured bones and a head injury; (2) “large sum of money for medical expenses”; and (3) punitive damages.

10. Therefore, based upon the allegations contained in the Petition, Plaintiff’s alleged damages clearly seem to be in excess of this Court’s jurisdictional limit under 28 U.S.C. 1332(a).

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<sup>1</sup> In Count II, Plaintiff states that he is seeking “compensatory and exemplary damages” for Defendant’s failure to act which Plaintiff claims was “willful, wanton and malicious.” See Exhibit A.

***The Parties are Citizens of Different States***

11. Plaintiff is a citizen of the State of Missouri.

12. Defendant is a Virginian limited liability corporation with its principal place of business in Virginia. As such, Defendant is considered a citizen of Virginia for purposes of diversity.

13. Thus, diversity is complete as Plaintiff and Defendant are citizens of different states, and this Court has subject matter jurisdiction over this matter.

14. Written notice of the filing of this Notice of Removal is being given promptly to Plaintiff by service hereof, and a copy of the Notice of Removal is being promptly filed with the Circuit Court of St. Louis County, Missouri, as required by 28 U.S.C. § 1446(d).

THEREFORE, Defendant removes this action from the Circuit Court of St. Louis County, Missouri to this Honorable Court.

HEPLERBROOM LLC

By: /s/ Matthew H. Noce  
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Attorneys for Defendant  
Family Dollar Stores of MO, LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that this            day of            the foregoing was filed via the ECF/CM system with the Clerk of the Court and copies will be served electronically on Mr. Garry Seltzer, [mechliens@prodigy.net](mailto:mechliens@prodigy.net), Attorney for Plaintiff, 7751 Carondelet Avenue, Suite 708, St. Louis, MO 63105.

/s/Matthew H. Noce